

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 PM-04 H-02

INR-07 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15

USIA-06 EB-07 OMB-01 TRSE-00 JUSE-00 COME-00 /067 W

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R 010700Z MAY 76

FM AMEMBASSY ANKARA

TO SECSTATE WASHDC 3405

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FOR L/PM

E.O.11652: N/A

TAGS: PGOV, PFOR

SUBJECT: CABINET TASK FORCE ON QUESTIONABLE PAYMENTS ABROAD:

FOREIGN LAWS ON QUESTIONABLE PAYMENTS.

REF: STATE 94647

1. THE FOLLOWING RESPONSES ARE BASED ON INFORMATION PROVIDED BY LOCAL ATTORNEYS AND ARE LETTERED TO CORRESPOND TO QUESTIONS IN REFTEL PARA 2.

A. YES. THE TURKISH CRIMINAL CODE LAW NO. 765, MARCH 13, 1926, AMENDED, DEALS SPECIFICALLY WITH EXTORTION IN CHAPTER TWO, ARTICLES 209 AND 210, AND WITH BRIBERY IN CHAPTER THREE, ARTICLES 211 THROUGH 227. SUMMARY: THE CRIMINAL CODE PROVIDES A PENALTY OF NOT LESS THAN FIVE YEARS IMPRISONMENT FOR ANY PUBLIC OFFICIAL WHO IS FOUND GUILTY OF EXTORTION AND A PENALTY OF UP TO TEN YEARS FOR PUBLIC OFFICIALS RECEIVING A BRIBE AND UP TO THREE YEARS FOR THOSE OFFERING THE BRIBE.

B. NO. OF COURSE, EXPENDITURES MADE BY COMMERCIAL FIRMS ARE REQUIRED UNDER TURKISH TAX LAW TO BE RECORDED

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IN THE FIRM' BOOKS WITH RELEVANT RECEIPTS. ANY

ILLEGAL EXPENDITURES WOULD PRESUMABLY BE REVEALED WHEN BOOKS ARE AUDITED.

C. YES AND NO. A MINISTERIAL DECREE, NO. 10/58, JANUARY 5, 1939, SPECIFICALLY FORBIDS THE PAYMENT OF COMMISSIONS TO AGENTS ON TRANSACTIONS INVOLVING GOVERNMENT AGENCIES, ALTHOUGH IT DOES NOT PROHIBIT THE USE OF AGENTS. THIS REPORTEDLY WAS NEVER ENFORCED BEING CONSIDERED IMPRACTICAL. BUT ABOUT TWO MONTHS AGO, THE PROVISIONS OF THIS DECREE WERE BROUGHT TO ATTENTION AND ATTEMPTS TO ENFORCE IT IN SOME CASES AT LEAST ARE REPORTEDLY BEING MADE. WE UNDERSTAND THAT CONTRACTS REVEALING COMMISSIONS HAVE BEEN REJECTED IN SOME CASES.

D. YES. THERE ARE THIRTEEN ARTICLES IN THE POLITICAL PARTIES ACT, NO. 648 OF JULY 16, 1965 THAT DEAL WITH CONTRIBUTIONS TO OR SOURCES OF INCOME FOR POLITICAL PARTIES. ARTICLES 65 AND 71 DEAL WITH DONATIONS TO POLITICAL PARTIES BY INDIVIDUALS OR CORPORATE ENTITIES AND ARTICLES 65 AND 72 WITH CREDITS. IN GENERAL THE LAW STIPULATES THAT GOVERNMENT AGENCIES, MUNICIPAL CORPORATIONS, STATE ENTERPRISES, GOVERNMENT-OWNED BANKS OR THOSE INSTITUTIONS ESTABLISHED BY SPECIAL LAW, LABOR UNIONS, ETC. ARE NOT PERMITTED TO DONATE TO POLITICAL PARTIES. ALL OTHER INDIVIDUALS AND CORPORATE ENTITIES MAY CONTRIBUTE NOT MORE THAN 25,000 TL EACH YEAR. SIMILARLY, SUCH ORGANIZATIONS LISTED ABOVE MAY NOT EXTEND CREDIT OR LOANS TO POLITICAL PARTIES. BUT OTHER INDIVIDUALS OR LEGAL ENTITIES MAY DO SO WITHOUT LIMIT. ACCORDING TO ARTICLE 123, ANY VIOLATION OF THESE PROVISIONS SUBJECT THE INDIVIDUAL, ORGANIZATION, OR RESPONSIBLE REPRESENTATIVE OF THE POLITICAL PARTY TO PENALTY OF UP TO ONE YEAR IMPRISONMENT. ARTICLE 78 STIPULATES THAT UNLAWFUL DONATIONS OR LOANS TO A POLITICAL PARTY MAY BE CONFISCATED BY THE MINISTRY OF FINANCE. IT IS ALSO UNDERSTOOD THAT INDIVIDUALS AND LEGAL ENTITIES MAY DONATE WITHOUT LIMIT TO INDIVIDUAL POLITICIANS WHO PERIODICALLY DECLARE THESE DONATIONS AS TAXABLE INCOME.

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E. YES. UNDER TURKISH TAX LAW, THE RECIPIENT MUST DISCLOSE ANY POLITICAL CONTRIBUTIONS RECEIVED AS NOTED IN "D" ABOVE. THE INDIVIDUAL DONOR HAS NO OBLIGATION TO REPORT POLITICAL CONTRIBUTIONS. THE CORPORATE DONOR AS NOTED IN "B" ABOVE WOULD HAVE TO RECORD SUCH CONTRIBUTIONS OR EXPENDITURES IN THE COMPANY RECORD.

F. NO. WE ARE INFORMED THAT THERE ARE NO SPECIFIC

LAWS THAT PROHIBIT THE OFFERING OF SOLICITATION OF PAYMENT OR RECEIPT OF KICKBACKS, ETC. BY INDIVIDUALS OR CORPORATIONS NOT INVOLVING GOVERNMENT OFFICIALS OR AGENCIES. OUR SOURCES SAY THAT CORPORATIONS ARE ALLOWED A MAXIMUM FREEDOM IN CONDUCTING BUSINESS PROVIDED THEY ARE NOT STATE ENTERPRISES AND THEIR COMMERCIAL TRANSACTIONS DO NOT VIOLATE THE PUBLIC ORDER. SINCE PRIVATE ENTERPRISES ARE ESTABLISHED PRIMARILY FOR PROFIT MOTIVE, EACH TRANSACTION WHICH SERVES THIS OBJECTIVE AND IS OTHERWISE NOT PROHIBITED IS LEGITIMATE.

2. EXCERPTS OF THE PERTINENT LEGISLATION WHERE AVAILABLE IN ENGLISH WILL BE FURNISHED TO THE DEPARTMENT, FOR ATTENTION OF L/PM AS SOON AS THEY CAN BE OBTAINED.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CABINET, BRIBERY, COMMITTEES, BUSINESS FIRMS, FOREIGN INVESTMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 01 MAY 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: vogelfj
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976ANKARA03475
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760167-0873
From: ANKARA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t197605104/aaaadkkf.tel
Line Count: 130
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 76 STATE 94647
Review Action: RELEASED, APPROVED
Review Authority: vogelfj
Review Comment: n/a
Review Content Flags:
Review Date: 22 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <22 JUN 2004 by ifshinsr>; APPROVED <22 OCT 2004 by vogelfj>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CABINET TASK FORCE ON QUESTIONABLE PAYMENTS ABROAD: FOREIGN LAWS ON QUESTIONABLE PAYMENTS.
TAGS: PGOV, PFOR, EINV, TU, US, XX
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006